RECORD AND BRIEFS

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In The
Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

RENE SANCHEZ-GOMEZ, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

AMICUS CURIAE BRIEF ON BEHALF OF THE CALIFORNIA STATE SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONER

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AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR REVIEW

Amicus Curiae is the California State Sheriffs' Association ("CSSA").[1] *Amicus Curiae* respectfully submits the following brief in support of Petitioner, United States, in accordance with global consent to amicus curiae briefs provided by all parties.

I. INTERESTS OF *AMICUS CURIAE*

Amicus Curiae is the California State Sheriff's Association ("CSSA"), which is a nonprofit professional organization that represents each of the fifty-eight (58) elected California Sheriffs. CSSA was formed to allow the sharing of information and resources between sheriffs and departmental personnel, in order to allow for the general improvement of law enforcement throughout the State of California.

CSSA's membership is made up of all of the Sheriffs in the counties throughout the State of California, with authority over many law enforcement officers and the majority of inmates throughout the State. These Sheriff members of *Amicus Curiae* are Constitutional officers within California counties, who have policy

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[1] No party or counsel for a party authored this brief, in whole or in part. No person or entity other than *Amicus Curiae*, its members, or its counsel made any monetary contribution to the preparation or submission of this brief. This representation is made in compliance with Rule 37.6 of the United States Supreme Court Rules. Even though ten days' notice was not given, all parties have given consent to the filing of this brief, evidence of which is on file with the clerk's office.

making authority and oversight over their Departments and jail and court facilities within the State. Sheriff members have management of rank and file officers, including correctional officers.

This case raises important issues for *Amicus Curiae*. CSSA and all law enforcement throughout the State of California are subject to the Ninth Circuit's published opinion in this matter. In fact, the effects of the opinion are already reverberating throughout courtrooms in California. Immediately after the Court's issuance of the opinion, courts in the State have already been ordering the unshackling of inmates during all pre-trial proceedings, notwithstanding any security determinations of law enforcement officers.

Amicus Curiae submits this brief to the Court in order to provide a practical and distinct perspective, unique from the parties involved, as to the potential negative safety and other implications of the opinion in this matter. Specifically, the members of *Amicus Curiae* are directly impacted by the opinion. The opinion affects their daily management and implementation of security protocols in courtrooms throughout the State. Most importantly, the opinion impedes the control, supervision and administration the members of CSSA have over inmates within their custody and control who are transported to and from jail facilities by their deputies to attend pre-trial, State court criminal proceedings, as well as the responsibility CSSA members have for overall court security management.

II. SUMMARY OF THE ARGUMENT

This brief addresses only the second question presented by the Petition for Writ of Certiorari of the United States in this matter:

> 2. Whether the court of appeals erred in concluding that the Fifth Amendment forbids the United States Marshals Service for the Southern District of California, with the approval of the district judges in that high-volume jurisdiction, from implementing a policy of placing pretrial detainees in physical restraints during non-jury court proceedings.

In accordance with Rule 10 of the Supreme Court Rules, review is granted for compelling reasons, including a conflict among the courts of appeals on an important issue, and to settle an important question of federal law, particularly where a court of appeal opinion conflicts with a Supreme Court opinion. These standards are met here and require this Court's review.

III. ARGUMENT

A. Review By This Court is Necessary Due to a Circuit Conflict, in Order to Settle Important Questions of Law, and Due to the Ninth Circuit's Refusal to Follow this Court's Opinion.

The Ninth Circuit's Opinion conflicts with opinions of the Second and Eleventh Circuit Courts of Appeals, as well as this Court's statement, on the issue of

physical restraints traditionally being permissible during pre-trial proceedings. The Ninth Circuit's Opinion also implicates important issues of law, namely the ability of individual courts and law enforcement personnel to cooperatively provide for the safety and security of the courtrooms and court facilities over which they share authority in such management, for the benefit of court officers and staff, law enforcement personnel, all inmates and members of the public present at such facilities.

1. The Ninth Circuit's Opinion Conflicts with Other Courts of Appeals.

As the Ninth Circuit's dissenting opinion notes, there is a conflict created by the Ninth Circuit's Opinion because it is directly contrary to the opinions in *United States v. Zuber*, 118 F.3d 101 (2d Cir. 1997) and *United States v. Lafond*, 783 F.3d 1216 (11th Cir. 2015). In fact, the Ninth Circuit recognized the conflict that was created by its Opinion in this matter, and attempted to distinguish these other opinions. (Slip Op. at 63 (citing Maj. Op. at 22-23 n.8).) However, the conflict remains and requires this Court's intervention to remedy and make right.

In *Zuber*, the Court of Appeal refused "to extend the rule . . . requiring an independent, judicial evaluation of the need to restrain a party in court – to the context of non-jury sentencing proceedings." *Zuber*, at 104. The *Zuber* court recognized that "[t]he Marshals Service is, of course, charged with the movement of

persons in custody in and around the courthouse, and responsible also for court security," and that, "[n]ot surprisingly, in most such cases, a district judge will defer to the professional judgment of the Marshals Service regarding the precautions that seem appropriate or necessary in the circumstances." *Id.* Moreover, the *Zuber* court found that, ordinarily, "judges, unlike juries, are not prejudiced by impermissible factors" such as the presence of visible restraints.

The Ninth Circuit's Opinion dismisses *Zuber* as merely relating to the issue of whether there was "inherent prejudice" in a lack of individualized review as to inmate physical restraints, not whether there was any liberty interest of an inmate in remaining free from safety restraints during all court proceedings. In making its ruling, the *Zuber* court distinguished its earlier opinion in *Davidson v. Riley*, 44 F.3d 1118, 1122 (2d Cir. 1995).

Davidson addressed whether physical restraints affect the "fairness of the factfinding process," and the potential that "[f]orcing a party to appear at a *jury* trial in manacles and other shackles may well deprive him of due process unless the restraints are necessary." *Id.* The *Zuber* court recognized that "*juror* bias certainly constitutes the paramount concern in such cases." *Zuber*, 118 F. 3d at 103-104 (emphasis added). However, the *Zuber* court found that individualized findings were not required "every time a person in custody is brought into a courtroom in restraints." *Id.* at 104.

The *Davidson* court had noted that the right implicated by the use of safety restraints is "the right to a fair trial[, which] is fundamental." *Davidson*, at 1122. The "vital constitutional right" is "'[f]airness in a *jury* trial.'" *Id.* (emphasis added) (quoting *Bailey v. Systems Innovation*, 852 F.2d 93, 98 (3d Cir. 1988)). The rights of the accused were required to be balanced against security concerns for purposes of trial, in order "'to have an impartial *jury*.'" *Davidson* at 1123 (emphasis added) (quoting *Tyars v. Finner*, 709 F.2d 1274, 1276, 1284 (9th Cir. 1983)). Indeed, this Court has found that "'no person shall be *tried* while shackled and gagged except as a last resort.'" *Illinois v. Allen*, 397 U.S. 337, 344, 25 L. Ed. 2d 353, 90 S. Ct. 1057 (1970) (quoted in *Tyars*, 709 F.2d at 1284 (emphasis added)). Moreover, courts are required to avoid the unnecessary determination of "a broad constitutional rule." *Tyars*, at 1284.

Similarly, in *Lafond*, the court found that the common law rule against shackling only "prohibit[s] the use of physical restraints *visible to the jury* absent a trial court determination . . . that they are justified by a state interest specific to a particular trial." *Lafond*, 783 F.3d at 1225 (changes in original) (emphasis added) (quoting *Deck v. Missouri*, 544 U.S. 622, 629, 125 S. Ct. 2007, 2012, 161 L. Ed. 2d 953 (2005)). The *Lafond* court specifically relied upon this Court's determination in *Deck* for this conclusion.

Contrary to the *Deck* Court's formulation of the right of inmates with respect to physical restraints, the Ninth Circuit's Opinion creates a direct conflict

with the opinions set forth above. This Court's intervention is necessary in order to resolve this conflict and to provide a definitive statement regarding the Ninth Circuit's deviation from this Court's prior clear statement that individualized determinations concerning the use of safety restraints applies solely to jury proceedings.

2. The Ninth Circuit's Opinion Rejects this Court's Prior Determination that the Right of Inmates Against Application of Safety Restraints Applies Only to Jury Proceedings.

The Ninth Circuit's Opinion in this matter directly conflicts with this Court's opinion in *Deck v. Missouri*, 544 U.S. 622, 626, 125 S. Ct. 2007, 2010-2011, 161 L. Ed. 2d 953 (2005), as stated above. In *Deck*, this Court analyzed the common law on the issue of shackling and found that "Blackstone and other English authorities recognized that the rule *did not* apply at 'the time of arraignment,' or like proceedings before the judge. It was meant to protect defendants appearing *at trial before a jury*." *Id.* at 626, 125 S. Ct. at 2010-2011, 161 L. Ed. 2d 953 (emphasis added). The Ninth Circuit Opinion does not accept this Court's analysis in *Deck*, but instead replaces the Court's conclusions set forth in *Deck* with its own review of the common law on this issue, and reaches a contrary conclusion.

As the dissent emphasizes, this Court has already made a definitive statement on the question at issue here – regarding whether pre-trial detainees can be

constitutionally restrained. *Deck v. Missouri*, 544 U.S. 622, 626, 125 S. Ct. 2007, 2010-2011, 161 L. Ed. 2d 953 (2005). As set forth above, this Court has clearly stated that the common law rule against physical restraints "*did not* apply at the 'time of arraignment,' or like proceedings before the judge." *Id.* at 632-633 (emphasis added). The Majority Opinion in this matter recognizes this rule as stated by this Court, but casts that rule and this Court's reasoned analysis aside, and instead concludes that this statement "is undoubtedly dictum," since the facts in *Deck* only involved "shackling at capital sentencing." The Opinion even recognizes that "[p]ersuasive Supreme Court *dicta* are usually heeded by lower courts," but then concludes that such *dicta* need not be heeded because the Supreme Court was simply wrong in its statement above – that "the very sources on which the Supreme Court relied" were "contradict[ory]" to the Court's ultimate conclusion on this issue. (Slip Op. at 27.) However, this Court cannot permit its statements and underlying analysis to be so easily discarded. The Ninth Circuit's Opinion has not only created a split in the Circuit Courts of Appeals, which must be resolved by this Court's review, but also implicates important, practical issues of safety in courtroom proceedings in the Ninth Circuit's rejection of this Court's analysis in *Deck*. Indeed, judges currently are implementing the Ninth Circuit's Opinion, which is detrimentally impacting the safety of law enforcement, court staff, and the safety and security of inmates themselves in courts throughout the State of California, as well as any courts subject to the Opinion within the Ninth Circuit.

The Ninth Circuit, however, cannot supplant this Court's historical analysis of this issue. Instead, this Court's prior review of the common law must be afforded its proper binding and precedential value. And this Court must reaffirm the flexibility and discretion with which district courts are entrusted to control the security of courtrooms in pre-trial proceedings. Specifically, this Court's review is necessary in order to uphold the *Deck* Court's finding that there is no common law right to be free from safety restraints during pre-trial proceedings. District courts must again be afforded the ability to utilize their discretion and flexibility in such pre-trial proceedings, particularly in a manner that properly defers to law enforcement in making relevant security determinations.

B. Review By this Court Allows for the Clear Determination of Important Legal Issues Having a Widespread Effect on Courtroom Security.

The Ninth Circuit's Opinion affects all courts within the State of California and the thousands of inmates over which CSSA members have responsibility, with negative implications for the safety of such inmates, the safety of all court personnel, law enforcement personnel, and the public present in State courtrooms.

As the dissent recognizes, "even when detainees are outside the walls of a particular detention facility, they are still subject to detention," and "the detainee is

subject to reasonable governmental control." (Slip Op. at 66.) The Ninth Circuit has recognized that prisoners and pre-trial detainees both retain some constitutional rights, but such "retained constitutional rights . . . were subject to restrictions and limitations based on 'institutional needs and objectives.'" *Bull v. City & County of San Francisco*, 595 F.3d 964, 972 (9th Cir. 2010). "Institutional" needs are not limited to the custodial institutions themselves, but the ongoing management of inmates in transit and in courtrooms themselves.

In *Bull*, the Ninth Circuit upheld as constitutional strip searches of all detainees "'after every contact visit with a person from outside the institution,'" in order to protect against smuggling of, among other things, weapons, which was "all too common an occurrence." *Id.* at 971, 973. This Court similarly upheld extensive requirements for strip searches of new inmates in jail facilities. *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 327, 132 S. Ct. 1510, 1516, 182 L. Ed. 2d 566 (2012). In *Florence*, this Court recognized that "both convicted prisoners and pretrial detainees" have limited constitutional rights due to the need to maintain security and discipline over inmates. *Id.* at 328, 132 S. Ct. at 1517 (citing *Bell v. Wolfish*, 441 U.S. 520, 546, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)).

Although the analysis of these requirements focused on the penological interests of such regulations in an institutional setting, one fundamental concept is the same as that at issue here – all inmates in custody generally have reduced liberty interests. They are

physically incarcerated while awaiting arraignment and, often, trial; they are subject to safety restraints and restrictions in their everyday movements and in their transportation. All defendants are, indeed, innocent until proven guilty in the eyes of the law. However, this legal presumption alone cannot dictate freedom from safety restraints in pre-trial settings. The application of safety restraints during pre-trial proceedings in order to maintain security cannot rise to constitutional proportions in contemplation of all of the circumstances considered by the district court here, including the nature of crimes, the nature and brevity of pre-trial proceedings, case loads, and the expert recommendations of the Marshals Service.

While both the dissent and the majority acknowledge that inmate restrictions relating to safety restraints often relate to those of penal institutions, including the housing and transportation of inmates, the dissent also aptly points out that the Majority Opinion unfairly "draws a hard line at the courtroom door." (Slip Op. at 65.) Indeed, the Ninth Circuit made a similarly unjustifiable distinction in *United States v. Howard*, 429 F.3d 843, 851 (9th Cir. 2005), wherein it concluded that "[r]estrictions on defendants during judicial proceedings, however, are not within the realm of correctional officials. The conduct of judicial proceedings is the domain of the courts." But this is an artificial construct. The responsibility of the members of *Amicus Curiae* for courtroom and courthouse security and the safety of inmates within their charge does *not* end at the courtroom door, and the issues presented

herein are *not* merely the concerns for "[p]reservation of dignity and decorum . . . for the conduct of judicial proceedings that determine issues of liberty and life." *Id.*

In reality, security and safety interests do not disappear simply because of the location of an inmate within a courtroom. In addition, court decorum and the court's role in the dispensation of justice cannot serve to override such safety and security interests at stake here. There are a number of specific such security and safety issues about which *Amicus Curiae* have the utmost concern, and which this Court should consider.

First, modern professional criminals present unique security concerns to courtrooms and jail facilities. The Majority Opinion too easily concludes that law enforcement officers may bring forth to a court's attention "information pertaining to particular defendants" in order to justify the application of safety restraints to a specific individual. (Slip Op. at 32.) However, the dissent demonstrates the fallacy in this conclusion, by noting that, here the "record [showed] that the Marshals Service is *unable* to make well-founded individual judgments about what threat, if any, a pretrial detainee poses." (Slip Op. at 69.) The dissent also emphasizes that there is a "history of detainee-related assaults and weapons smuggling in the Southern District of California." The Marshals' Services recommendation to the court for a comprehensive safety restraint rule as to all pre-trial detainees had, therefore, been based upon specific security concerns about that district court. There had been "two separate

inmate-on-inmate assaults inside courtrooms, . . . including a detainee with *no* violent background who attempted to smuggle a razor blade in his shoe." (Slip Op. at 35.)

Indeed, gangs and other organized or sophisticated criminal organizations frequently and purposefully use those inmates designated as "non-violent" inmates, often by coercion or threat, to smuggle weapons and/or commit violent acts. Such individuals are utilized with the express intent of evading detection. Some of these concerns as to inmate populations were expressly recognized by this Court in *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 331, 333, 132 S. Ct. 1510, 1518, 1520, 182 L. Ed. 2d 566 (2012) (gangs "recruit new members by force, engage in assault against staff, and give other inmates a reason to arm themselves"); (inmates charged with minor offenses or non-violent crimes "who might be thought to pose the least risk, have been caught smuggling prohibited items into jail").

Thus, the non-violent status of an inmate and the level of crime for which an inmate stands accused are very poor predictors of the propensity to take violent action within the courtroom. In finding a blanket strip search rule constitutional in *Florence*, this Court stated just this principle. *Id.* at 334, 132 S. Ct. at 1520 ("[T]he seriousness of an offense is a poor predictor of who has contraband and that it would be difficult in practice to determine whether individual detainees fall within the proposed exemption. . . . People detained for minor offenses can turn out to be the most

devious and dangerous criminals."). The comprehensive safety restraint policy for inmates while in the courtroom for pre-trial proceedings advocated by the Marshals Service and *Amicus Curiae* here is specifically designed to mitigate these risks.

As the article appended to the dissenting opinion makes note, the inmate who grabbed the gun of a deputy sheriff while in a courtroom in Michigan had "'not been combative'" while in custody and had "always been cooperative." Similarly, this Court has recognized, in the context of analyzing inmate strip search policies, that "it would be 'a difficult if not impossible task' to identify 'inmates who have propensities for violence, escape, or drug smuggling.' This was made 'even more difficult by the brevity of detention and the constantly changing nature of the inmate population.'" *Florence*, 566 U.S. at 327, 132 S. Ct. at 1516 (2012) (internal citations omitted).

In addition, there was specific evidence presented to the district court here and before the Ninth Circuit regarding the nature of the inmate population in the Southern District which justified the comprehensive rule. The majority acknowledged that "the Marshals Service can access only limited criminal background information regarding detainees who are not residents of the United States, and the Southern District of California hears an unusually high number of cases involving such detainees." (Slip Op. at 36.) In fact, "[i]n the years leading up to the policy's implementation, the Marshals Service produced approximately 40,000 in-custody defendants for court appearances, with an

average of over 200 defendants moving through district cellblocks *per day*." (Slip Op. at 36 (emphasis added).) Further, the dissent properly characterizes the Marshals' Service recommendations as "expert judgment," to which the court had properly given deference. (Slip Op. at 64.) Those charged with the daily management of inmates are better suited to evaluate safety concerns relating to those inmates. They, like *Amicus Curiae*, are the ones with specific knowledge of risks, based on actual confrontation with types of contraband, methods of smuggling, gang control, etc.

Second, a requirement for certain inmates to be free from safety restraints during pre-trial proceedings negatively affects the liberty interests of *other* inmates. As the Ninth Circuit itself has noted in *Thompson v. City of Los Angeles*, 885 F.2d 1439 (9th Cir. 1989), "jail officials have a constitutional obligation to provide inmates with adequate medical care and *personal safety*." *Id.* at 1447 (emphasis added) (citing *Wright v. Rushen*, 642 F.2d 1129, 1132-1133 (9th Cir. 1981)). The rights of one individual inmate to be free from restraints simply cannot override the rights of other inmates to a safe and secure environment in the courtroom setting, particularly where there is an articulated risk of inmate-on-inmate violence. If an inmate were planning on carrying out an attack on another inmate, what better location for that than the courtroom, where both inmates might appear at the same time free from safety restraints?! An even worse scenario would be posed if the attacker were free from safety restraints and the victim inmate were not. The victim

inmate would not be a position to attempt to defend himself or herself from the attacker or otherwise attempt to protect against such attack. And as noted above, those who would do purposeful harm to other inmates often take advantage of just this discrepancy in physical restraints by recruiting or coercing the inmate who would *not* be subject to restraint based on criminal history or behavior alone.

Of course, it cannot be gainsaid that the application of safety restraints protects the safety and security of courtroom staff, law enforcement, and judicial officers themselves. It is axiomatic that there can be no faith in justice or the fairness and dignity of judicial proceedings if judicial officers or others protecting the efficient functioning of the proceedings are themselves subject to risk of direct harm. In the dissent's appended article regarding the Michigan court incident, there is note of a prior incident in an Atlanta courtroom where a presiding judge was *fatally* shot with a deputy sheriff's gun that had been taken by an inmate. No justice can be dispensed, dignified or otherwise, if there is no judicial officer to conduct criminal proceedings. More importantly perhaps, as the dissent in *Deck* noted, "[n]o decision of this Court has ever intimated, let alone held, that the protection of the 'courtroom's formal dignity,' is an individual right enforceable by criminal defendants. . . . The power of the courts to maintain order, however, is not a right personal to the defendant, much less one of constitutional proportions." *Deck*, at 655-656.

Third, pre-trial proceedings are simply not conducive to inmates being free from safety restraints. As the dissent notes, the common law rule preventing the presentment at bar of an inmate in irons was primarily directed at "trial . . . to ensure that the defendant 'was not so distracted by physical pain[2] during his trial that he could not defend himself' " and that he could, at that time, " 'have the use of his reason, and all advantages to clear his innocence.' " (Slip Op. at 57, 59.) The *Deck* Court noted, among other concerns, that restraint during trial could potentially "interfere with the defendant's ability to communicate with counsel," although the significant concern also noted by the Court of potential prejudice to the jury by way of visible shackles during trial, is, of course, not present in any pre-trial proceedings. (Slip Op. at 22.)

The dissent rightly recognizes that, in contrast to trial, there are special concerns as to pre-trial proceedings, "with the practicalities of removing restraints for a hearing of limited purpose and duration." In fact, the dissent observes that the common law recognized that restraints were allowed "at arraignment because 'it would be to no purpose to insist on [unfettering] for so little a time as the prisoner now had to stand at the bar.' " (Slip Op. at 60 (change in original) (citing *Lee v. State*, 51 Miss. 566, 571 (1875)).) Given the severe security concerns articulated by the Marshals Service, echoed by *Amicus Curiae* here, and the nature of the

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[2] The dissent by Justice Thomas in *Deck* emphasized that "modern restraints are nothing like the [iron] restraints of long ago." *Deck* at 640.

specific inmate population in the Southern District, there is little justification for overriding the reasoned recommendation of the Marshals Service and affirmed by the Southern District. This is particularly true when the rule created by the Ninth Circuit simply elevates some ambiguously stated constitutional right, purportedly recognized at common law but not found by this Court, for the singular sake of skewed notions of justice and courtroom decorum, so that an inmate can be remain free of safety restraints for a routine and very brief pre-trial appearance.

Indeed, for such brief pre-trial proceedings, security risks are even more heightened. Each time a law enforcement officer is required to apply and remove safety restraints of numerous inmates for pre-trial proceedings, the potential risk of mistakes is created in the restraining of a particular inmate, as well as the creation of wider opportunities for unscrupulous criminals to take full advantage of vulnerable points created by this process. As the dissent warned in *Deck*, an ambiguous right to unshackling provides no real gain to criminal defendants, at the potential expense and substantial risk of all those in courtrooms – including law enforcement personnel, court staff, and even inmates themselves.

Moreover, as the dissent in *Deck* also noted, "the rule against shackling did not extend to arraignment. A defendant remained in irons at arraignment because 'he [was] only called upon to plead by *advice of his counsel*'; he was not on trial, where he would play the main role in defending himself." *Deck*, at 640-641

(changes and emphasis in original) (citing Trial of Christopher Layer, at 100). The right to be free of physical restraints is simply not implicated here and does not rise to a constitutional level during pre-trial proceedings not before a jury. As the dissent notes, the criminal defendants in this action did not claim "that the restraints used in their cases interfered with their ability to communicate with their lawyers or participate in their own defenses." (Slip Op. at 63.)

Finally, the Ninth Circuit's Opinion does not give sufficient leeway to individual courts to determine their own safety and security needs. As noted above, the Southern District determined that, based on its unique set of circumstances, including the number and nature of inmates, a comprehensive safety restraint rule was justified, based upon the expert recommendation of the Marshals Service. The dissent in *Deck* emphasized the need for the Supreme Court to afford individual courts with the ability "to accommodate the unfortunately direct security situation faced by this Nation's courts." *Deck*, at 658, Thomas, J., dissenting. Indeed, this Court recognized the "unworkable" nature of an individualized "'evaluation of the seriousness of particular crimes, a difficult task for which officers and courts are poorly equipped.'" *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318, 337, 132 S. Ct. 1510, 1522, 182 L. Ed. 2d 566 (2012) (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 761-762, 104 S. Ct. 2091, 80 L. Ed. 2d 732 (1984) (White, J., dissenting)). The Ninth Circuit's Opinion here directly contradicts

this Court's conclusion on this issue by requiring just such an individualized determination in all cases.

In fact, the Ninth Circuit's conclusion here conflicts with its own prior determination of similar issues. In *United States v. Howard*, 429 F.3d 843, 851 (9th Cir. 2005), the court found that, in order to comply with minimum due process requirements, there need only be "some justification" for a district-wide restraint requirement, and that such a restriction is valid merely when it is "reasonably related to a legitimate goal," and does not thus serve, instead, the goal of punishment. *Id.* (quoting *Bell v. Wolfish*, 441 U.S. 520, 539, 99 S. Ct. 1861, 60 L. Ed. 2d 447 (1979)). Despite relying, in *Howard*, on the *Bell* Court's analysis, the Ninth Circuit expressly rejected the application of *Bell* here. In contrast, the *Howard* court had suggested that due process may not require "that there be no restraining whatsoever without an individualized determination," and also acknowledged that almost all of the opinions recognizing a right against restraints found such right as "aris[ing] in the context of proceedings in *front of a jury*." *Howard*, at 850, 851 (emphasis added).

Indeed, the Ninth Circuit's holding that an *individualized* determination as to specific criminal defendants is required in all instances is a point particularly of concern in the State courtrooms, where the members of *Amicus Curiae* are charged with the responsibility of ensuring the safety of all present. The county resources over which *Amicus Curiae* members have control are even more constrained than those possessed by the Marshals Service for the district courts.

Yet, the Ninth Circuit's ruling would require levels of staffing that cannot be practically accommodated, and for little benefit and much risk. As the dissent emphasizes, the Ninth Circuit's Majority Opinion "restrict[s] the choices that states in this circuit can make to secure detainees without inviting a lawsuit under § 1983. The ramifications of the majority's holding will reach into courthouses of every size and capacity." (Slip Op. at 68-69.) This "one-size-fits-all security decree" (Slip Op. at 69) is not well-suited to the day-to-day operations of very different courtrooms with varied needs, resources, inmate populations, etc., and without valid justification for a defendant's right to be free of physical restraints, at brief pre-trial proceedings that do not implicate fair trial principles because there is no jury.

IV. CONCLUSION

Given the limited right in non-trial proceedings to be free of safety restraints, a district court's ability to make a security determination specific to its own courtroom operations must be protected, even if exercised in a comprehensive manner by delegation to law enforcement officers entrusted with the responsibility to ensure courtroom safety and the knowledge necessary to do so as effectively as possible. There is, in fact, a delicate balance between court decorum and efficiency on the one hand, which is the realm of the judiciary, and law enforcement's executive management and supervision of inmates on the other. These two realms are not mutually exclusive. Nor is the right of

a defendant in court proceedings independent of these realms. When pure constitutional rights to a fair trial and an impartial jury are not implicated by application of safety restraints in pre-trial, non-jury proceedings, district courts must be afforded the full ability to protect the safety, security and efficient functioning of courtrooms for all participants.

For all of the foregoing reasons, this Court is urged to grant review of the important issues presented by this case, in order to resolve conflicts among the Circuit Courts of Appeals and the negative safety implications created by the Ninth Circuit's Opinion in this matter.

Respectfully submitted,

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